Reserved.
COURT NO.3

Criminal Misc. Application No. 154 of 2001
(Old no.2691 of 1999)

Rajesh Bharadwaj …Applicant.

Vs.

State …Respondent.

WITH

Criminal Revision no.99 of 2001
(Old no.1453 of 1999)

Rajesh Bharadwaj …Revisionist.

Vs.

State …Respondent.

Criminal Misc. Application No. 213 of 2001
(Old no.1874 of 2000)

Vivek Kumar Khanna …Applicant.

Vs.

State …Respondent.

AND

Criminal Misc. Application No.395 of 2001
(Old no.853 of 2000)

Anil …Applicant.

Vs.

State …Respondent.

….

Hon'ble Irshad Hussain, J.

Above noted miscellaneous criminal application no.154 of 2001 has been filed by charge-sheeted accused under section 482 read with section 397(1) of the Code of Criminal Procedure (hereinafter referred to as the "Code") for quashing of charge-sheet no.12 of 1999 dated

24.05.1999 and order dated 27.05.1999 passed thereon by the Additional C.J.M.-I, Hardwar.

Criminal revision no.99 of 2001 under section 397(1) of the Code has also been filed with the same object seeking quashing of the order of taking cognizance and summoning the said accused-petitioner passed on 27.05.1999.

The petition no.213 of 2001 has been preferred by the informant for setting aside the order dated 23.02.2000 passed by Additional Sessions Judge-III, Hardwar directing separation and commencement of the proceedings of S.T. No.13 of 1997 as against accused Rakesh Raturi and Bittu alias Madhukar thereby directing stay of trial in regard to third accused Anil Paudda.

Criminal miscellaneous application no.395 of 2001 noted above has been filed by the accused-petitioner Anil Paudda to quash the order dated 15.12.1999 passed by III Additional Sessions Judge, Hardwar, whereby the application of this petitioner to stay the proceedings of the session trial No. 13 of 1997 till the petitions preferred by accused-petitioner Rajesh Bharadwaj (which are referred above) are not disposed of on merit by the High Court, was rejected.

Heard Sri Daya Shankar Misra, Senior Advocate, learned counsel for the petitioner Rajesh Bharadwaj and Sri B.A. Khan, learned counsel of the informant-petitioner Vivek Khanna and the learned A.G.A.

Brief facts relating to the aforesaid petitions are that onj a commission of murder of Pankaj Khanna at about 8:45 P.M. on 01.06.1996 in the town of Kankhal, district Hardwar, first information report was lodged by victim's brother/informant Vivek Khanna at 9:30 P.M., the same day. The murder was committed by five persons and out of these one suspect Rajesh Bharadwaj also resident of the same town, was specifically mentioned by name in the F.I.R. On its basis case crime no.75 of 1996, under sections 147, 148, 149, 302 I.P.C. was registered and investigation of the case was taken up by S.H.O., P.S. Kankhal, district Hardwar. On 22.08.1996 charge-sheet no.81 of 1996 in the crime was submitted against two accused, viz.,

Bittu alias Madhukar and Anil Paudda who is the petitioner of one of the petitions under judgment. The Magistrate concerned took cognizance of the offence against these accused on 16.09.1996. Supplementary charge-sheet no.81-A of 1996 dated 01.09.1996 was submitted against another accused Rakesh Raturi in said crime and the Magistrate concerned took cognizance of the offence against this accused on 14.10.1996. The father of the victim had been complaining that the police had shielded other culprits of the crime and ultimately the state government decided to entrust the investigation to C.B. C.I.D. and in pursuance thereof by order dated 13.06.1997, the investigation was entrusted to said crime branch. In consequence thereof Inspector R.D.Gaur of C.B. C.I.D. was handed over the investigation which was later on taken up by another Inspector of the said crime branch and on completion of the investigation charge-sheet no. 12 of 1999 in the said crime was submitted against accused Rajesh Bharadwaj on 24.05.1999 and against him cognizance was taken by the concerned Magistrate on 27.05.1999. The charge-sheet filed on 24.05.1999 and the order of taking cognizance dated 27.05.1999 are impugned in the aforementioned two petitions preferred by accused-petitioner Rajesh Bharadwaj. All the above named accused who have been charge-sheeted have according to law been committed to the court of session for their trial for commission of offence of murder etc. of above bvnamed victim.

Learned counsel for the accused-petitioner Rajesh Bharadwaj in order to assail the legality and propriety of the charge-sheet no.12 of 1999 dated 24.05.1999 and order dated 27.05.1999 taking cognizance by the learned Magistrate submitted that neither in law there can be a second F.I.R. of an offence nor after submission of the charge-sheet fresh investigation or re-investigation of a crime can be made and since it has so happened in the case of the accused-petitioner the charge-sheet in question as well as the summoning order after taking cognizance by the Magistrate are liable to be quashed and set aside. Referring to the earlier two charge-sheets nos. 81/96 and 81A/96

against three accused, learned counsel submitted that another F.I.R. by the informant so as to seek the further indulgence of the state to direct investigation against another suspect of the crime could not have been entertained and the same could not have been made basis for taking a decision that investigation of the crime shall be conducted by C.B.C.I.D. Learned counsel in support of the argument that there cannot be a second F.I.R. and no fresh investigation on receipt of the same placed reliance on the decision of the Hon'ble Supreme Court in the matter of **T.T.Antony Vs. State of Kerala and others, (2001) 6 Supreme Court Cases, 181.** The facts of the case before the Hon'ble Supreme Court were at variance because second F.I.R. was registered on the direction of Director General of Police and investigation was initiated on the second F.I.R. This is not so in the instant case because as is evident from the averment of the affidavit of Inspector Jitendra Kumar, C.B.C.I.D., Meerut the informant has raised some grievance before the state government which after due consideration and taking into account the facts and circumstances of the case ordered further investigation to be carried out by its own police agency, C.B.C.I.D. It is not a case of registering a second F.I.R. and therefore, the reported decision is of no help to the cause of the petitioner.

The submission of the learned counsel for the petitioner was that the State government could not have legally directed re-investigation after the charge-sheets had already been filed by civil police against the culprits. Learned counsel did not dispute that under the provisions of section 173(8) of Code further investigation is permissible, but the provision does not warrant initiation of re-investigation of fresh investigation after the report by the police as contemplated under section 173(2) of the Code has been submitted. Learned counsel in support of the argument placed reliance on the decision of **Hon'ble Supreme Court in the case of K.Chandrasekhar Vs. State of Kerala and others, 1998 Criminal Law Journal, 2897.** In view of the submission the question which falls for consideration is whether the alleged charge-sheet dated 24.05.1999, Annexure-8 to the affidavit of the accused-petitioner

Rajesh Bharadwaj is the outcome of further investigation or of fresh investigation/re-investigation by C.B. C.I.D. and whether the ratio of the above decision apply to the facts of the instant case or not.

Annexure-6 and Annexure-7 to the above affidavit are the copy of order dated 13.06.1997 of the state government directing investigation in the crime by C.B. C.I.D. and copy of the order of the Dy. S.P. of the C.B. C.I.D. entrusting the investigation to Inspector R.D.Gaur respectively. Perusal of these documents do not lead to the inference that the state government took decision and directed re-investigation or fresh investigation of the crime to be started ab initio wiping out the earlier investigation altogether. It is of significance that necessity for the action so taken by the government arose on account of the fact that informant complained that the local police which had investigated the crime had shielded other culprit of the crime. The mater was also agitated earlier before the Magistrate concerned and later on before the district authorities and the state government as is evident from the copy of the representation which is annexure to the affidavit of Inspector Jitendra Kumar of C.B. C.I.D., Meerut and also the copy of the order dated 05.04.1997 passed by C.J.M., Hardwar on the application of the father of the victim. The claim made by the father of the victim and the informant was well founded because as a result of the investigation by C.B. C.I.D. it was found that the then S.H.O. of P.S. Kankhal and one S.I. posted there and also clerk-constable of the said police station have made manipulations in the official papers with a view to save another culprit from being arraigned and charge-sheeted as an accused of the crime. In view thereof decision was taken and accordingly F.I.R. was lodged against these three police personnel for offences punishable under sections 120-B, 217 and 218 of I.P.C. F.I.R. is Annexure-7 to the counter affidavit referred to above. There is nothing on record to show that it was a decision to initiate fresh investigation or re-investigation of the crime, but considering the allegations against the police personnel which were not without any basis the decision taken by the government was bonafide and that too to initiate further investigation

of the crime by its won police agency C.B. C.I.D. Merely because word "further" as an adjunct to investigation in the order of the government has not been added it cannot be argued that the decision was for re-investigation or fresh investigation of the crime. The record of the proceedings does not indicate that any interference was intended in the earlier investigation and further that investigation was not to be started ab initio wiping out the earlier investigation altogether. It was only a decision to further investigate the crime so that the apparently well founded grievance of the victim's father and the informant could legally be redressed. On the face of the facts and circumstances of the case the learned counsel for the informant and respondent-State have also rightly submitted that it is a case of further investigation as contemplated by the provision of section 173(8) of the Code and therefore, legality of the charge-sheet and the order of taking cognizance cannot be disputed.

It also need to be mentioned that the facts of the above reported case are distinguishable. In the case before the Hon'ble Supreme Court, consent under section 6 of the Delhi Special Police Establishment Act, 1946 was given and investigation of crime no.246/1994 was also entrusted to C.B.I. After investigation C.B.I. filed its report in the final form which was accepted by the competent Magistrate and the accused were discharged. Later on the state government decided to withdraw the consent as given earlier and to have the case investigated by a special team of the state police officers. Considering the peculiar facts and circumstances of the case it was found a case of directing fresh or re-investigation of the crime which was found to be started ab initio wiping out the earlier investigation altogether. This apart it was also found that the exercise to direct such an investigation was not bonafide and it was accordingly held that subsequent withdrawal of the consent by state government for investigation of case by state police is impermissible. As mentioned above the facts of the instant case are at variance because neither there was any malafide exercise of power by the State nor it was a case of fresh or re-investigation after wiping out the

earlier investigation altogether and also that the further investigation was the need of the situation by another state agency C.B. C.I.D., which ultimately resulted in bringing the police personnel to book who have prepared false record or made manipulation with intent to save a culprit from punishment as has been alleged by the victim's father and the first informant. In view thereof, the above reported decision has no bearing on the facts of the instant case.

It was further submitted that since no formal permission from the court for further investigation by different agency, viz., the C.B. C.I.D. was obtained, the impugned charge-sheet is bad in law and illegal. In support reliance was placed in the matter of **Vijayakumar Vs. Kamarudhin and others, 1999 Criminal Law Journal, 1294.** In the reported decision it has been observed that there is no statutory requirement for police to obtain permission from the court to conduct further investigation in the case. Further in view of the apex court's decision in **Ram Lal Narang Vs. State, A.I.R. 1979, S.C., 179,** the above proposition as convassed by the learned counsel for the petitioner was laid down down by the Hon'ble Judge of the Kerala High Court. The Hon'ble Supreme Court in the case referred had taken the view as under:

> "In our view not withtanding that a Magistrate had taken cognizance of the offence upon a police report submitted under section 173 of the 1989 Code the right of the police to further investigation was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation the police could express their regard and respect for the court by seeking its formal permission to make further investigation.

From above it is evident that as a matter of propriety in the interest of the purity of the administration of criminal justice formal permission of the court to make further investigation was found desirable. In the instant case from the averment of counter affidavit of Inspector Jitendra Kumar it is evident that application of formal

information regarding further investigation was submitted before the court on 03.02.1998, copy of which is Annexure CA-1 to the said affidavit. Although from the record copy of order said to have been passed by the court has not been brought on record, however in the peculiar circumstances of the case the assertion made in the affidavit cannot be lightly ignored. Moreover the further investigation particularly when there is a complaint that local police had tried to save the culprit by making interpolation in the papers further investigation could have only been proceeded to after receiving the relevant documents and case diary from the court concerned. As mentioned above simultaneous to the submission of the alleged charge-sheet after further investigation an F.I.R. was lodged against three police personnel under sections 120-B/217/218 I.P.C. indicating that the Inspector of the C.B. C.I.D. who made further investigation have had access to the documents and case diary with the permission of the court concerned. Considering these aspects I feel no hesistation in coming to the conclusion that formal permission of the court was also obtained in regard to the further investigation of the crime. The above decision relied upon by the learned counsel also does not help to the cause of the petitioner.

It was next argued by the learned counsel that the impugned order dated 27.05.1999 taking cognizance of the charge-sheet in question is illegal as the same appear to have been passed mechanically on receipt of the charge-sheet in question without consciously considering the merit of the case and the propriety of filing of the charge-sheet against the accused-petitioner. At the stage of taking of cognizance of the charge-sheet and passing summoning order detailed discussion of the allegations and the evidence is not required. If the learned Magistrate in his said order has not dealt with the facts and other aspects of the case while taking the cognizance of the offence and summoning the accused-petitioner it would not mean that the learned Magistrate had not considered the propriety of the charge-sheet in question and the evidence collected during further investigation. In view thereof the order impugned cannot be said to

be illegal or unjustified and the same is not liable to be set aside or quashed.

For the reasons aforesaid both the petitions of accused-petitioners Rajesh Bharadwaj are devoid of merit and are therefore liable to be dismissed. As a consequence of this, the other two petitions become infructuous as the stay granted in the above petitions stand vacated and all these sessions trials against all the accused shall commence according to law. It may also be pointed out that accused-petitioner Anil had preferred an application paper no.63-B in S.T.No.13 of 1997 seeking indulgence of the court to have the proceedings stayed in view of the stay granted in the above petition preferred by co-accused Rajesh Bharadwaj. The prayer was refused per order dated 15.12.1999 which was assailed by filing the separate petition by this accused. In view of the dismissal of the petitions of accused Rajesh Bharadwaj and vacation of the stay, this accused-petitioner ceased to have any legal grievance.

The other petition which was preferred by the informant aggrieved by the order dated 23.02.2000 passed by the learned Sessions Judge in the said session trial also does not require any consideration because the proceedings shall commence against all the accused in the session trials which have been consolidated by the learned Sessions Judge concerned for trial. In short these two petitions are also liable to be dismissed.

All these petitions are hereby dismissed and the stay orders dated 03.02.2000 and 07.03.2000 passed in petitions nos. 395 of 2001 (old no.853 of 2000) and 213 of 2001 (old no.1874 of 2000) respectively are vacated. Learned Sessions Judge shall proceed to dispose of the session trials at the earliest according to law.

(Irshad Hussain, J.)

24.04.2003./B.